

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:

**H.C. JEFFRIES TOWER
COMPANY, INC.
Debtor**

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§
§
§

**CASE NO. 17-35027-H5-11
(Chapter 11)
JUDGE BROWN**

Emergency Motion for Use of Cash Collateral

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Emergency relief has been requested, if the Court considers the Motion on an emergency basis, then you will have less than 21 days to answer, if you object to the requested relief or if you believe that the emergency consideration is not warranted, you should file an immediate response.

Represented parties should act through their attorney.

TO THE HONORABLE KAREN BROWN, UNITED STATES BANKRUPTCY JUDGE:

H.C. Jeffries Tower Company, Inc., Debtor-in-Possession herein files this Emergency Motion for Use of Cash Collateral pursuant to 11 U.S.C. §§ 361 and 363, and in support thereof would show this Court as follows:

I.
Parties

1. The Debtor may be served through its President, Herbert C. Jeffries at 24800 Ford Rd., Porter, Texas 77365, with a copy to its Counsel, Julie M. Koenig, 815 Walker, Suite 1040, Houston, Texas 77002; Julie.Koenig@cooperscully.com.
2. The Bank & Trust of Bryan/College Station may be served through its Chairman and Chief Executive Officer, Timothy N. Bryan, 1716 Briarcrest, Suite 400, P.O. Box 5847, Bryan, Texas 77802-2777, with a copy to its Counsel, Jon Miller at Miller@roddersmiller.com.
3. The Internal Revenue Service may be served at the following addresses:
 - a. Internal Revenue Service
1919 Smith Street, Stop 5024HOU
Houston, Texas 77002;
 - b. United States Attorney
District Counsel
8701 S. Gessner, Suite 710
Houston, Texas 77074;
 - c. United States Attorney
910 Travis, Suite 61129
Houston, Texas 77208;
 - d. United States Attorney General
United States Department of Justice
Room D327
10th & Constitutionn Avenue, N.W.
Washington, DC 20530; and,
 - e. Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

With a courtesy copy to Jose Vela, Jose.Vela@usdoj.gov.

II.
Jurisdiction and Venue

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334. Venue is proper pursuant to 28 U.S. C. §§1408 and 1409. This is a core preceeding pursuant to 28 U.S.C. §157(b)(2)(A) (D), (K), (M) and (O).

III.
Notice

5. Sufficient and adequate notice of the Cash Collateral Motion has been given to prevent immediate and irreparable harm pursuant to Bankruptcy Rule 4001(c); Local Bankruptcy Rule 4001(c), and 4002-1(i) , as required by Sections 102, 361 and 363 of the Bankruptcy Code

IV.
History and Background

6. On August 21, 2017, H.C. Jeffries Tower Company, Inc. (“Tower” or “Debtor”), filed a Voluntary Petition under Chapter 11 of Title 11 of the United States Code.
7. The Debtor is operating as Debtor-in-Possession pursuant to 11 U.S.C. §§1107(a) and 1108 and no Trustee has been appointed.
8. Tower was formed as a dba of Herbert C. Jeffries in 1979, and was incorporated on December 2, 1999. It specializes in broadcast tower erection, fabrication, manufacturing, maintenance, management, retrofitting, repair, and any other tall tower needs in the continental United States. It has been providing superior tower fabrication, erection and maintenance for the tall tower TV, FM and other broadcast service industries since its inception and is one of only a handful of tall tower companies acknowledged by the Federal Government to build the tallest towers.

9. Herbert C Jeffries owns 100% of Tower.

V.
Prepetition Liens

a. The Bank & Trust of Bryan/College Station:

10. On December 6, 2010, The Bank & Trust of Bryan/College Station (“Bank”), Tower, and Ford Steel, LLC (“Ford”) executed a promissory note (the “Bank Note”) evidencing indebtedness in the amount of \$671,871.12 secured by personal and real property described in an Extension and Modification of Promissory Note and Real Estate Lien dated June 23, 2011¹, and recorded as Document No. 2011085662 in the Public Records of Montgomery County, Texas. Herbert C. Jeffries (“Jeffries”) executed a personal guaranty of the Bank Note.
11. The Bank filed an amendment to the Texas Enterprise Bank’s UCC-1 Financing Statements on July 21, 2010. The Bank also filed its own UCC-1 Financing Statements on September 17, 2010, and January 3, 2011 (collectively the “UCC-1 Filings”). The UCC-1 Filings were against both Tower and Ford and constitute a blanket lien on all of the Debtors’ assets. A copy of the UCC-1 Financing Statements are attached hereto as Exhibit “A”.
12. On February 28, 2013, the Bank, Tower, Ford and Jeffries entered into a Standstill Agreement whereby the Bank agreed to forego all remedies under the Bank Note in return for payments of \$20,000 per month until the earlier of September 1, 2013 or the date the Bank gave Tower and Ford a termination notice. Tower and Ford defaulted under the Standstill Agreement. On June 28, 2017, the Bank filed suit in

¹ The indebtedness to Bank actually dates back to 2006 via a loan from Texas Enterprise Bank which was subsequently purchased by Bank.

Montgomery County, Texas in a case styled *The Bank & Trust of Bryan/College Station v. H.C. Jeffries Tower Company, Inc., Ford Steel, L.L.C. and Herbert C. Jeffries*, Case No. 17-001700-CV-85 in the 85th Judicial District Court of Brazos County, Texas to collect on the Bank Note.

c. The Internal Revenue Service:

13. Tower is indebted to the Internal Revenue Service (the “IRS”) for 940 and 941 taxes between 2012 and 2016.
14. The IRS filed Notices of Federal Tax Liens against Tower in the total amount of \$1,546,965.69 on the following dates:
 - a. March 5, 2012, in the amount of \$133,333.88;
 - b. March 13, 2013, in the amount of \$395,165.64;
 - c. April 15, 2013, in the amount of \$94,755.50;
 - d. July 26, 2013, in the amount of \$73,910.03;
 - e. June 17, 2014, in the amount of \$183,448.87;
 - f. August 13, 2014, in the amount of \$83,688.52;
 - g. December 23, 2014, in the amount of \$125,548.83;
 - h. July 13, 2016, in the amount of \$289,316.91;
 - i. January 20, 2017, in the amount of \$40,594.67;
 - j. February 13, 2017, in the amount of \$47,087.20; and,
 - k. June 14, 2017, in the amount of \$80,115.64.

Tower has remained current on its indebtedness to the IRS for the year 2017.

15. Copies of the IRS Federal Tax Liens against Tower are attached hereto as Exhibit “B”.

VI.
Cash Collateral

16. Tower requires the emergency use of cash collateral in the amount of \$128,815.59 for the next twenty-one (21) days to meet payroll and expenses to continue its business operations. The majority of these funds are for payroll, payroll taxes and benefits, insurance sales tax and continuing expenses. The anticipated income for

this period is \$131,946.11 plus cash on hand. A copy of the anticipated budget for the next twenty-one (21) days is attached hereto as Exhibit "C" and fully incorporated herein by reference.

17. In addition, the Debtor requires the use of cash collateral on a monthly basis. The exact amount needed is difficult to calculate based on Tower's business and will be discussed at the Cash Collateral Hearing.
18. As adequate protection for the use of cash collateral, the Debtor shall agree, with Court approval, to grant replacement liens to the Bank and the IRS equal to those held pre-petition.
19. The security interests granted to the Bank and the IRS post-petition shall not have priority over (a) prior perfected and unavoidable liens and security interest in the property of the Debtor's estate as of the Petition Date other than their liens in the Pre-Petition Collateral, provided that (1) such liens and security interest are prior to other prepetition liens and security interests, valid, perfected, not adequately protected, and non-avoidable in accordance with applicable law; (b) the quarterly fees payable to the United States Trustee pursuant to 28 U.S.C. §1930; and (c) a \$2,000 per month carve out for fees and expenses of Debtor's Counsel to be held in trust pending further Order of the Court.

Wherefore, Premises Considered, H.C. Jeffries Tower Company, Inc. Debtor-in-Possession, prays that this Court conduct an Emergency Hearing on the Emergency Motion to Use Cash Collateral, enter an Order for Emergency Use of Cash Collateral for the Period August 21, 2017 through September 8, 2017, set a final hearing on the Motion, enter an Order for Interim Use of Cash Collateral after the hearing, and for such other and further relief, at law and

in equity, as this Court deems just.

Respectfully submitted this 22nd day of August, 2017.

Cooper & Scully, PC.

By: /s/ Julie M. Koenig

Julie M. Koenig
SBA # 14217300
815 Walker, Suite 1040
Houston, Texas 77002
713/236-6800 (Telephone)
713/236-6880 (Telecopier)
Julie.Koenig@cooperscully.com

Attorneys for the Debtor

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been served on all of the parties listed below and on the attached service list, including parties requesting notice, via either ECF Notification or by first class mail, proper postage affixed, on the 22nd day of August, 2017

By: /s/ Julie M. Koenig

Julie M. Koenig

For Equitable Life & Casualty Insurance Company:

Bruce Ruzinsky bruzinsky@jw.com;
Matt Cavanaugh mcavanaugh@jw.com

For The Bank & Trust of Bryan/College Station:

Jon Mill Miller@rodgersmiller.com

For the Internal Revenue Service:

Jose Vela Jose.Vela@usdoj.com;

Label Matrix for local noticing
0541-4
Case 17-35027
Southern District of Texas
Houston
Mon Aug 21 13:33:55 CDT 2017

ADT Security Services
P.O. Box 371878
Pittsburg, PA 15250-7878

American Tower
PO Box 2009
Woburn, MA 01888-0009

Automatic Pump&Equipment Co
P.O. Box 26012
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Cooper & Scully, P.C.
815 Walker St., Suite 1040
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Federal Express
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Dallas, TX 75266-0481

Forward Edge Inc
P.O.BOX 3140
HOUSTON, TX 77253-3140

HARRIS COUNTY/CITY OF HOUSTON
C/O BANKRUPTCY DEPT
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HOUSTON, TX 77253-3064

IRS
8701 S. GESSNER
HOUSTON, TX 77074-2944

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Insolvency Department
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Applied Bank
P.O. Box 701465
Philadelphia, PA 19176-0165

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HJ Tower Management Inc.
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(p)INTERNAL REVENUE SERVICE
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Ericson Air crane
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Central Point, OR 97502-0010

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Porter, TX 77365-5450

Godwin Lewis
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Dallas, TX 75270-2041

Harris County
c/o John Dillman
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Houston, TX 77253-3064

Internal Revenue Service
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Houston, TX 77060-1241

MONTGOMERY COUNTY
TAX COLLECTOR
400 N SAN JACINTO
CONROE, TX 77301-2823

Maverick Unlimited Inc.
119 Center Street
Seville, OH 44273-9504

NDL Chicago
P O Box 355
Summit, IL 60501-0355

Nott Ltd
3801 La Plata Highway
Farmington, NM 87401-1826

Paul J. Ford and Co. Structural Engineer
250 East Broad Street # 600
Columbus, OH 43215-3708

Premier Trailer Leasing
8222 Market Street
Houston, TX 77029-2416

SECURITIES AND EXCHANGE
COMMISSION
450 FIFTH STREET NW
WASHINGTON, DC 20549-0006

SGS Towers
315 W.Huron Street, Suite 120
Ann Arbor, MI 48103-4262

Sagebrush Towers Inc.
24900 Ford Road
Porter, TX 77365-5452

Skyline Steel I
8 Woodhollow Road, Suite 102
Parsippany, NJ 07054-2829

Specialty Tower Lighting, Ltd.
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Houston, TX 77080-7223

Standard Premium TX Auto
PO BOX 52-2941
Miami, FL 33152-2941

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Suddenlink
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Dallas, TX 75266-0365

T-TEX INDUSTRIES
8302 Alameda Genoa Road
Houston, TX 77075-2560

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
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AUSTIN, TX 78774-0100
Attn: Bankruptcy Dept

Texas Comptroller / SALES TAX
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Austin, TX 78774-0100

Texas Mutual Ins. Co.(workers comp)
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Texas Workforce Commission
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Trout Tire Company
25044 FM 1314
Porter, TX 77365-5298

Tupa Ventures, Inc
26212 Whispering Pines
Magnolia, TX 77355-8294

UNITED STATES TRUSTEE
515 Rusk Avenue, Ste. 3516
Houston, Texas 77002-2604

US Trustee
Office of the US Trustee
515 Rusk Ave
Ste 3516
Houston, TX 77002-2604

United Health Care
United Health Care Department CH10151
Palatine, IL 60055-0151

Julie Mitchell Koenig
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IRS
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Houston, TX 77002

(d)Internal Revenue Service
STOP 6692 AUSC
Austin, TX 73301-0030

End of Label Matrix	
Mailable recipients	54
Bypassed recipients	0
Total	54